UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

MIRLAINE SAINT HILAIRE,

Case No. 6:14-bk-05195-ABB
Chapter 13

Debtor.
_____/

ORDER GRANTING DEBTOR'S VERIFIED MOTION TO AVOID LIEN OF BRECKENRIDEGE LANDOWNERS ASSOCATION, INC. AND FOR DETERMINATION THAT CLAIM IS UNSECURED (DOC. NO. 35)

This matter came on for hearing on December 17, 2014 on the Verified Motion to Avoid Lien of Breckenridge Landowners Association, Inc. and Determination that Claim is Unsecured (the "Motion to Strip") (Doc. No. 35) filed by the Debtor and the Response to the Motion to Strip (the "Response") (Doc. No. 41) filed by Breckenridge Landowners Association, Inc. (the "Creditor"). The Motion to Strip is due to be granted and the Creditor's stripped off lien will not be enforceable against a subsequent purchaser of the subject property upon receipt of the Debtor's discharge.

Background

The Debtor filed this voluntary Chapter 13 case on May 5, 2014 (Doc. No. 1). The Creditor filed an amended claim in the amount of $13,585.77 secured by a junior interest in Debtor's real property located at 805 Galway Boulevard, Apopka, FL (the "Property"). The Creditor's claim represents unpaid fees and interests dating back to July 1, 2008 (Claim 4-2). The Property was quitclaimed from the Debtor's ex-spouse, Luc Saint Hilaire ("Luc"), to the Debtor in 2012 (Doc. No. 57). A divorce judgment was entered between the Debtor and Luc in

2014 also purporting to transfer title in the Property to the Debtor as the sole owner (Doc. No. 57).

The Debtor filed her Motion to Value on October 2, 2014 asserting the fair market value of the Property to be $209,700.00 subject to a first mortgage held by Suntrust Mortgage, Inc. ("Suntrust") in the amount of $349,031.00 (Doc. No. 35). The Motion to Value argues there is no equity for the Creditor's claim to attach and, therefore, the claim should be deemed unsecured and void pursuant to 11 U.S.C. § 506(d).

The Creditor filed its Response objecting to the striping off of its lien for three reasons: First, the Creditor questioned the validity of the quitclaim deed inferring the Property may not solely be owned by the Debtor; Second, that the lien should not be stripped off as to Luc; and, Third, that stripping off of the lien does not prohibit the Creditor from recovering the amount due under the stripped off lien from a subsequent owner and first mortgagees, even where the property is worth less than the amount owed on the first mortgage, pursuant to section 720.3085 of the Florida Statutes and as provided in the Creditor's Declaration.

Findings of Fact

The Parties submitted memorandums of law on January 14, 2015 (Doc. Nos. 49 and 50, respectively) as directed by the Court at the December 17, 2014 hearing. The Creditor does not dispute the Debtor's valuation of the Property and "does not object to the stripping of its lien as to Debtor" (Doc. No. 50). The Creditor's lien is wholly unsecured as the value of the first mortgage held by Suntrust exceeds the fair market value of the Property.

Both the Debtor and the Debtor's non-filing ex-spouse are named as borrowers under the promissory note secured by the first mortgage held by Suntrust (Claim 2-1). Luc, a "married

man", transferred the Property to the Debtor, a "married woman", by a quitclaim deed recorded March 21, 2012.[1] The Final Judgment of Dissolution of Marriage (Doc. No. 57) (the "Divorce Decree") was executed on February 13, 2014, providing the Property is "hereby transferred, set over and conveyed to the Wife, MIRLAINE ST. HILAIRE, in fee simple absolute." Only the Debtor, not Luc, has an interest in the Property as declared by the Divorce Decree.

The Divorce Decree states "both parties remain equally responsible for the current mortgages and [the Creditor's] debt pertaining to [the Property], in existence at the time of the entry of this final judgment" even in the event the Debtor obtains a loan modification as to the mortgage encumbering the Property (Doc. No. 57). The Divorce Decree unequivocally obligates both the Debtor and Luc for the indebtedness to the Creditor.

Conclusions of Law

The Debtor and Luc are jointly liable for the debt owed to the Creditor as commanded by the Divorce Decree. This shared liability to the Creditor does not prevent the Debtor from seeking to discharge her liability to the Creditor in bankruptcy. The Debtor is the sole owner of the Property pursuant to the Divorce Decree regardless of whether the quitclaim deed previously executed between Luc and the Debtor was defective. *See Sharp v. Hamilton*, 520 So. 2d 9, 10 (Fla. 1988) (finding a judgment of dissolution controlling as to title of real property once held as marital property).

Luc has no interest in the Property and, therefore, his shared liability of the debt owed to the Creditor is not secured by the Property. As the sole owner of the Property the Debtor is entitled to seek to strip off the Creditor's lien under Section 506 of the Bankruptcy Code. *See In*

[1] Orange County Property Appraiser Website, Doc. No. 20120150531 at Book: 10350, Page: 1974.

re Tanner, 217 F.3d 1357, 1360 (11th Cir. 2000). The Creditor's lien is a wholly unsecured junior lien, as conceded by the Creditor, and may properly be stripped off of the Property solely owned by the Debtor by operation of Sections 506 and 1322 of the Bankruptcy Code.

The remaining issue is whether the Creditor's lien will remain fully collectible against any subsequent owner of the Property pursuant to § 720.3085 of the Florida Statutes where the Debtor's Motion to Value is granted and the Creditor's lien is stripped off.

Section 720.3085(2)(b) of the Florida Statutes reads:

> A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner…

Section 720.3085(2)(b) provides that new parcel owners are jointly and severally liable with prior owners "for all unpaid assessments that came due up to the time of transfer of title." The intent of this statute is to impose liability for previously accrued assessments on a new parcel owner who acquires property by transfer of title. *Lunohah Investments, LLC. v. Gaskell*, No. 5D13-1175, 2013 WL 6816627, at *1 (Fla. Dist. Ct. App. Dec. 27, 2013). The Creditor's Declaration echoes this statutory right.[2]

Judge Isicoff, United States Bankruptcy Judge in the Southern District of Florida, has held § 720.3085(2)(b) of the Florida Statutes "unequivocally provide that a subsequent purchaser is liable for unpaid assessments of the prior owner" finding "no matter what the Debtors

[2] In addition to the rights of collection of Assessments stated in this Section 4.11, any and all persons acquiring title to or an interest in a Lot as to which the Assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the enjoyment of the Common Areas until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid and no sale or other disposition of Lots shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all Assessments and other sums due; provided, however, that the provisions of this sentence shall not be applicable to Institutional Lenders and purchasers contemplated by Section 4.12 of this Article (Doc. No. 50).

accomplish in their bankruptcy with respect to their liability for the assessments, nothing under applicable bankruptcy or non-bankruptcy law can impact a subsequent owner's *in personam* liability for the unpaid assessments." *In re Sain*, No. 13-13325-BKC-LMI, 2013 WL 5852496, at *3 (Bankr. S.D. Fla. Oct. 30, 2013) *leave to appeal denied sub nom. Sain v. Isles at Bayshore Master Ass'n, Inc.*, No. 14-20338-MC, 2014 WL 357200 (S.D. Fla. Jan. 31, 2014). This Court does not find this reasoning persuasive and respectfully disagrees.

The binding reading of Sections 506 and 1322 of the Bankruptcy Code requires bankruptcy courts "to determine the value of the homestead lender's secured claim under section 506 and then to protect from modification any claim that is secured by any amount of collateral in the residence." *In re Tanner*, 217 F.3d 1357, 1360 (11th Cir. 2000). Any claim that is valued under section 506 and determined to be wholly unsecured is, in turn, not protected from modification under section 1322(b)(2). *Id.*

"Once a determination has been made under § 506 that the remaining *in rem* claim is wholly unsecured and that the creditor holds no secured claim in the bankruptcy case, the creditor is left with its nonbankruptcy rights. The debtor may then modify those 'rights' under [section] 1322(b)(2) by voiding the security interest" conditioned upon the debtor receiving a discharge. *In re Scantling*, 465 B.R. 671, 680 (Bankr. M.D. Fla. 2012) *aff'd*, 754 F.3d 1323 (11th Cir. 2014).

A strip off modifies the rights of a lienholder such that the lienholder's claim is not secured in the bankruptcy case and, upon discharge of the debtor, the lien is void and the lienholder may not seek to enforce the lien under nonbankruptcy law. This analysis is equally

applicable to homeowner association liens as it is to mortgages. *See In re Plummer*, 484 B.R. 882, 890 (Bankr. M.D. Fla. 2013).

The Creditor is not entitled to resurrect a stripped off lien upon sale of the Property by invoking Section 720.3085(2)(b) of the Florida Statutes. To do so undermines the effect of the Bankruptcy Code and runs afoul of Congress's intent to permit the avoidance of certain liens in bankruptcy permanent upon discharge of a debtor. *See In re Victorio*, 454 B.R. 759, 776 (Bankr. S.D. Cal. 2011) *aff'd sub nom. Victorio v. Billingslea*, 470 B.R. 545 (S.D. Cal. 2012); *In re Zlogar*, 101 B.R. 1, 8 (Bankr. N.D. Ill. 1989) *aff'd sub nom. United States v. Zlogar*, 126 B.R. 53 (N.D. Ill. 1991) (stating revisions to lien stripping provisions in the Bankruptcy Code may be rewritten by Congress only); *In re Tanner*, 14 B.R. 933, 937 (Bankr. W.D. Pa. 1981) (stating the plain meaning of the language of Section 506 and elsewhere in the Bankruptcy Code, the legislative history, and the fresh start policy of the Bankruptcy Code, is conclusive that Congress intended Section 506(d) to authorize the avoidance of liens exceeding the value of the underlying collateral).

Section 720.3085(2)(b) of the Florida Statutes does not preempt the Bankruptcy Code's authority to strip wholly unsecured junior liens just as it unable to preempt other state statutes. The applicability of § 720.3085(2)(b) is not comprehensive or absolute where it creates conflict with other state statutes. *See e.g., Lunohah Investments, LLC. v. Gaskell*, No. 5D13-1175, 2013 WL 6816627, at *1 (Fla. Dist. Ct. App. Dec. 27, 2013). "Section 720.3085(2)(b) omits any mention of the survival of liens and therefore does not safeguard liens for unpaid assessments from being extinguished." *Cricket Properties, LLC v. Nassau Pointe at Heritage Isles Homeowners Ass'n, Inc.*, 124 So. 3d 302, 306 (Fla. Dist. Ct. App. 2013) (holding Section

720.3085(2)(b) does not permit the survival of liens for unpaid assessments where a tax deed has been issued pursuant to Section 197.552 and 197.573(2) of the Florida Statutes). The ability to reimpose liability on a lien stripped off in bankruptcy is beyond the scope and authority of Section 720.3085(2)(b) of the Florida Statutes.

Conclusion

The Debtor is the sole owner of the Property and, although she shares liability for the debt owed to the Creditor with Luc, she is not prohibited from seeking to discharge that liability in bankruptcy. The Bankruptcy Code permits the Debtor to strip off the Creditor's wholly unsecured lien and for the lien to be made void upon receipt of the Debtor's discharge. Section 720.3085(2)(b) of the Florida Statutes may not be applied to make Sections 506 and 1322 of the Bankruptcy Code a nullity or provide an end-run to the benefits received by the Debtor through her bankruptcy case where the Debtor obtains her discharge.

Accordingly it is,

ORDERED, ADJUDGED and DECREED that the Debtor's Verified Motion to Avoid Lien of Breckenridge Landowners Association, Inc. and Determination that Claim is Unsecured (Doc. No. 35) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that the lien shall not be enforceable against any subsequent purchase of the Property by operation of § 720.3085 of the Florida Statutes upon receipt of the Debtor's discharge.

Dated this 19th day of March, 2015.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge